IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	**Kimbo Mundy *et al.***		
SERIAL NO.:	**09/662,737**	GROUP ART UNIT:	**3691**
FILED:	**September 15, 2000**	EXAMINER:	**Olabode Akintola**

FOR: **A System for Aggregating Information from Enterprises Offering Items for Exchange Over a Communication Network**

CERTIFICATE OF ELECTRONIC FILING
I hereby certify that this correspondence is being transmitted to the United States Patent Office via EFS Web, on January 31, 2008.
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Attorney Docket No.: BDE-001CN (431/6)
(L9090/269360)

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DATE: January 31, 2008

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Included below is a concise summary of arguments for which this review is requested. A Notice of Appeal accompanies this request.

REASONS FOR THE REQUEST

The Examiner's rejection of Claims 2-33 and 47 in the most recent Office Action, as well as the earlier rejections in the previous office actions, omit essential elements required to establish prima facie rejections. In particular, the Examiner has not provided a reference that teaches or suggests at least the claim elements of "periodically collecting the information from the enterprises, and updating the information stored in the host database" and "dynamically scheduling the collection of information from the auction databases based upon content of previously collected information." Moreover, the Examiner has not provided a rationale to support the legal conclusions of obviousness. In light of these clear deficiencies in the rejections, a pre-appeal panel review is requested.

The Examiner rejected Claims 47, 2-10 and 25-31 under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,085,176 to Woolston ("Woolston") in view of U.S. Pat. No. 6,236,991 to Frauenhofer *et al.* ("Frauenhofer")/U.S. Pat. No. 6,301,574 to Thomas *et al.* ("Thomas")/U.S. Pat. No. 5,727,164 to Kaye *et al.* ("Kaye") (collectively "Modified Woolston"). The Examiner rejected Claim 11 under 35 U.S.C. §103(a) as being unpatentable

over Modified Woolston as applied to Claim 47, and further in view of U.S. Pat. No. 5,893,125 to Shostak ("Shostak"). The Examiner rejected Claims 12, 14-24, 32 and 33 under 35 U.S.C. §103(a) as being unpatentable over Modified Woolston as applied to Claims 47, 49 and 50, and further in view of U.S. Pat. No. 5,835,896 to Fisher ("Fisher").

The References Do Not Teach or Suggest All of the Claim Elements

Claims 9 and 15 require "periodically collecting the information from the enterprises, and updating the information stored in the host database." (emphasis added). The Examiner alleges that Woolston discloses this claimed limitation. Woolston discloses a private network of consignment nodes and a posting terminal. *See* Response to Office Action dated October 18, 2006, pg. 12; Response to Office Action dated May 22, 2007, pg. 11. The section of Woolston cited by the Examiner states that "having the database structure in a file at posting terminal 700 may allow the posting terminal to receive updates by remote transfer techniques…" Col. 16, ll. 8-12 (emphasis added). The posting terminal is a user computer or kiosk that displays the goods and that works in conjunction with a market maker computer that has a database of goods for sale. *See e.g.*, Col. 2, ll.31-45; Col. 14, ll. 61-72; and Col. 15, ll.1-6. The posting terminal of Woolston is not a server or host computer.

Claims 9 and 15 require that the host computer periodically performs the step of "collecting the information from the enterprises." The enterprises offer items for exchange and interact directly with shoppers. The enterprises do not specifically notify the host computer of information changes, instead the host computer periodically initiates the collection of information from the enterprises to update information stored in the host database. Woolston does not describe a host computer that periodically initiates the collection of information. The posting terminal receives record changes. The records at the posting terminal are linked with the database of the market maker computer (Col. 16, ll. 5-6) so there is no need for the posting terminal to collect information. Moreover, because the posting terminal is not a server or host computer the posting terminal of Woolston is not capable of "updating the information stored in the host database" as required by Claims 9 and 15. Woolston does not describe or suggest a host computer that periodically initiates the collection of information from multiple independently operated enterprises and uses the collected information for updating information stored in the host database.

Claims 11 and 13 require "dynamically scheduling the collecting of information from the auction databases based upon content of previously collected information." (emphasis added). The Examiner admits that Modified Woolston does not explicitly teach this claimed feature. However, the Examiner alleged that Shostak teaches this claimed feature in its Abstract. Although Shostak is cited for the first time in the most recent Office Action, Shostak suffers from some of the same deficiencies as previously described with respect to other references cited for Claims 11 and 13 rejections. *See e.g.*, Response to Office Action dated May 22, 2007, pgs. 15-16.

Shostak discloses a database system that "in response to receiving one or more modifications to information stored in the database, the system employs incremental queries to maintain the 'liveness' of the views." Abstract. Shostak discloses a direct connection between a user display and a database wherein the system simply receives a notification that the stored document has been modified and in response to this notification the system updates the user's view to reflect those modifications.

In the present invention there is no requirement that the enterprise notify the host computer of changes. Instead the host computer dynamically schedules and initiates the collection of information from various independent databases based upon information previously collected by the host computer, as required by Claims 11 and 13. Moreover, Shostak does not teach or suggest a system that dynamically schedules the collecting of information from multiple databases based upon previously collected information. To the contrary Shostak discloses a system the merely receives notifications that stored records have changed and then updates the users' views to reflect the changes.

There is No Rationale to Support the Legal Conclusions of Obviousness

As previously argued, there is no reason to combine the references in the manner suggested by the Examiner because the types of goods/services and the types of sellers/providers differ. *See* Response to Office Action dated May 22, 2007, pgs. 14-15. Woolston describes a discrete private network that is directed to the used goods and collectable market where the items are unique and only available in very limited numbers and where the items are not interchangeable. For example, two antique baseball cards for the same player in different conditions will be different prices.

Woolston describes "a trusted network of consignment nodes that act as brokers." Col. 2, ll. 13-14. A consignment node is a computer database of used goods preferably operated by a used good, collectible shop keeper or a bailee. A posting terminal allows a user to present goods to a computerized market and track the sales of goods and control the posted inventory. All consignment nodes users or operators, are licensees or franchisers of the software and hardware necessary to create and operate a consignment node. Col. 2, ll. 29-38. Woolston describes that the franchise agreement specifies which market a consignment node operator serves. For example, one consignment node operator may be given the market for antique pens.. Col. 2, ll. 44-48. Woolston does not describe a system that operates across the world wide web as an open network.

In contrast to Woolston, Frauenhofer discloses an open network system that has nothing to do with the sale or auction of goods. Frauenhofer discloses a system for collecting and categorizing metadata about content provided via the Internet, and matching and delivering categorized information, such as news articles, tailored to customized user profiles. Col. 2, ll. 21-27. An Intranet fetching or retrieval service differs from a collectable goods system since the fetching service merely finds desired information about various topics, such as all articles discussing the Chicago Bulls upcoming season, which can be provided to multiple users and at multiple times, whereas the goods system simply sells the collectable item and once it is sold, it is no longer available.

As previously argued, Thomas describes a system that is directed to outsourcing companies and independent contractors and is directed to services, not goods. *See* Response to Office Action dated May 22, 2007, pgs. 12-13. Clearly, the services of an independent contractor differ from a collectible good since the contractor can accept multiple projects, *i.e.* sell its services multiple times, whereas once a collectible good is sold, it is no longer available for sale (or at least not from the same seller or at the same price). Kaye describes a private inventory system that is only available to network members. *See* Response to Office Action dated May 22, 2007, pgs. 13-14. Although the system described by Kaye may be used for items other than electronic components, it requires the use of a family/subfamily/item format to create "three levels of product definition" and thus is directed to products defined by multiple levels of definitions. Col. 9, ll. 25-28. Woolston

does not define multiple levels of product definition and thus there is no reason to combine Woolston with Kaye.

The Examiner has not cited any known methods to combine elements of the consignment network of Woolston with elements of the public network of Frauenhofer or Thomas, or with the elements of the private network of Kaye that requires multiple levels of product definition. The networks are different and the Examiner has not provided a citation or explanation of how the cited elements could be modified to work together. Due to the fundamental differences in the networks and the functions provided, any combination of elements requires more than simple substitution and even if combined do not provide predictable results. The Examiner has failed to provide teachings of why or how to combine the cited elements from the different references. One of skill in the art would not perceive any teachings, suggestions, or incentives to combine the teachings of the cited references to arrive at the claimed invention.

In light of the foregoing, allowance of all of the pending claims is respectfully requested.

Respectfully submitted,

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